

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

Attorneys for C. W. Mining Company d/b/a Co-op Mining Company

Docket No. 95-025  
Cause No. ACT/015/025

The Board apparently wanted to give Water Users the opportunity to show what bearing, if any, such evidence would have on collateral estoppel. Water Users' memorandum has no substance, no meat. It includes no proffer of any withheld or new evidence, certainly nothing that would limit the application of collateral estoppel to this case. The failure of Water Users' "proffer" is the proverbial "nail in the coffin." The Board should rule that collateral estoppel applies.

**OBJECTION TO AND MOTION TO STRIKE WATER USERS' "PROFFER"**  
*(or, "Where's the Beef?")*

A proffer of evidence is something more than an unsupported argument as to what conclusions the evidence would support if offered. To proffer evidence requires one actually "to offer or tender, as, the production of a document and offer of the same in evidence." Black's Law Dictionary 1091 (5th ed. 1979). Utah law is quite clear:

An offer of proof must be certain, sufficient, and intelligible and must definitely state the facts sought to be proved. It must show the materiality, competence and relevancy of the evidence offered. The instant proffer [as to a witness's state of mind and what he told another] is certainly deficient under these standards ...

Dansak v. Deluke, 366 P.2d 67, 70 (Utah 1961) (emphasis added). *Accord* United States v. Wright, 63 F.3d 1067, 1070-71 (11th Cir. 1995) (emphasis added):

Appellant contends Albert was a critical witness that would have substantiated Appellant's defense of entrapment. However, Appellant failed to proffer the witness's testimony to the district court. ... The only indication of what might be expected of the witness was the statement that Appellant would testify, and the witness's testimony would "in essence, be the same testimony, that they would say the same thing." This does not constitute a proffer. A proffer details the facts to which the witness is expected to testify.

Merely alleging that evidence, if proffered, would support a desired finding is not at all the same thing as offering the evidence itself (*see* State v. Lairby, 699 P.2d 1187, 1195 (Utah 1984)), yet that is all Water Users have done. To proffer testimony one identifies the witness and describe the facts he or she would testify to. To proffer a document one produces the document. *See* KUTV, Inc. v. Conder, 635 P.2d 412, 414 (Utah 1981) ("... the trial judge may deem it appropriate to establish ... the identity of all witnesses that parties intend to call, and possibly require a proffer of what their testimony will be."); State v. Stone, 629 P.2d 442, 447 (Utah 1981) ("By way of a proffer of proof, I would expect his testimony would be as follows: ..."); Hamby v. Jacobson, 769 P.2d 273, 275 (Utah App. 1989) ("Hamby's attorney proffered that Hamby would testify as follows: ..."); Beals v. Beals, 682 P.2d 862, 864 (Utah 1984) ("... the court accepted a proffer of evidence that Crist had worked 122 hours at \$65.00 an hour for a total of \$7,924 in fees, plus \$888.73 in costs."). Water Users have not identified witnesses, stated what facts the witnesses

would testify to, and have not produced any documents. Water Users merely outline what Water Users claim to be "evidentiary issues" (page 3 of their "Proffer"), without making a single actual proffer of evidence. There's no beef in their burger. There's no proffer in their "Proffer."

What's more, a proffer of evidence must be timely. Any proffer of withheld evidence made after the Board's final ruling on the Tank seam hearing is untimely:

In general, a party must exhaust its administrative remedies as a prerequisite to seeking judicial review. Underpinning this doctrine is the principle that before an error is considered on appeal, an agency should have the opportunity to correct it. If a party does not *attempt* to establish the relevancy of evidence it seeks to introduce but is allowed on review to challenge the agency's decision finding that evidence irrelevant, this principle is abridged. [citation omitted] This is particularly true when the agency's expertise would allow it to gauge the significance of the proffered evidence better than a reviewing court

Mountain Fuel Supply v. Public Serv. Com'n, 861 P.2d 414, 423-24 (Utah 1993).

To preserve any claim of error in the exclusion of evidence, Water Users had to make their proffer during the Tank seam proceeding. They chose not to. In their July 10, 1995 Request for Rehearing, Water Users argued, "Had the existing mining area and its impacts been the issue before the Board, then the evidence produced by Petitioners would have been substantially different and far more complete." However, Water Users made no proffer of what that supposedly withheld evidence would have been.

In their brief in Castle Valley Special Service District et al. v. Utah Board of Oil, Gas and Mining, 938 P.2d 248 (Utah 1996), Water Users again argued, "Had the existing mining area for the Blind Canyon Seam and its impacts been the issue before the Board, then the evidence produced by Petitioners would have been substantially different and far more complete." However, Water Users still made no proffer of withheld evidence, which even then would have been untimely:

Ringwood further argues that the Court erred in excluding his evidence ... Ringwood, however, made no proffer of what the excluded testimony would have demonstrated. A judgment will not be reversed for an alleged error in the exclusion of evidence unless it appears in the record that the error was prejudicial. Ringwood's failure to make a proffer of proof as to what his evidence would show precludes him from asserting on appeal that the exclusion was error.

Downey State Bank v. Major-Blakeney Corp., 578 P.2d 1286, 1288 (Utah 1978).

The Tank seam record not only fails to show any prejudicial error in the exclusion of evidence, it fails to show any evidence was either excluded or withheld. The Utah Supreme Court rejected Water Users' argument they had not presented their evidence, and expressly held their case had been fairly tried. Water Users have already exhausted their administrative and judicial remedies. The doctrines of exhaustion of administrative remedies and finality of judgments close to further review any question of withheld evidence at the Tank seam hearing.

Water Users' so-called "Proffer" contains no proffers. It is a legal memorandum the Board neither requested nor authorized, in which Water Users, with no proffer of withheld or new evidence, and with little deference to the Tank seam record, makes the same arguments DOGM, the Board and the Utah Supreme Court have already considered and rejected. Where the Board only invited a *bona fide* proffer of withheld and new evidence, where no proffer was made, and where further proffer is barred as untimely, Co-op objects to and moves to strike in its entirety the "Proffer of Water Users Per Request of the Board."

### **CO-OP'S RESPONSE TO WATER USERS' "PROFFER"**

Assuming the Board would nevertheless consider any previously withheld evidence proffered by Water Users, Co-op addresses Water Users' so-called "proffers" in the order made.

#### **1. EVIDENCE WATER USERS CLAIM THEY WITHHELD DURING THE TANK SEAM HEARING.**

1. *Evidence of Groundwater flow elevations for the Lower Blackhawk Formation/Spring Canyon Sandstone aquifer and the projected intercept with the floor of the Blind Canyon Seam. ...*

There is no proffer of withheld evidence. Water Users produced evidence on this very point at the Tank seam hearing. [Tank Tr., testimony and exhibits of Bryce Montgomery generally]

2. *The geochemical, radiometric and stable isotope date indicate that several flow systems exist in the area. Evidence would have been presented to show that discharge associated with Birch Spring is different than most of the water entering the Blind Canyon Seam and discharging at Big Bear Spring.*

Such evidence was presented at the Tank seam hearing, [Tank Tr. 91-92, 290-306, 326-327, 367, Ex. 18, Ex. C sections 2.1.3, Ex. D sections 2.6 and 2.7], and led to the Board's Finding that "chemical analysis ... showed chemical dissimilarities between the two waters ..." Water Users concede their chemical and isotopic data, although not proffered even yet, supports Finding No. 46-48, Conclusion No. 7 and Co-op's model of the area's hydrology – that separate flow systems exist, and that water discharging at the springs is different than water from Blind Canyon seam.

3. *Evidence that mining in the area has in the past dewatered a groundwater system and has caused lower spring discharge within one year following mining.*

There is no proffer of withheld evidence. As DOGM points out, Water Users' unsupported statement merely raises endless other questions for which no Water Users proffer no evidence. For example: Who would testify? What area is "the area"? What mine – Bear Canyon mine, or some other? What "groundwater system" was dewatered? Where? When? How much? Was the "groundwater system" part of the Star Point/Panther aquifer, a perched aquifer, or something else entirely? What springs had lower discharge? When? For how long? Has the aquifer recharged? The spring? Are there supporting documents? What would they show? What is the relevance, if any, to Co-op's permit renewal?

Water Users' statement shows why a proffer requires one to offer actual evidence rather than make an unsupported argument. If Water Users refer to Bear Canyon mine and to Birch and Big Bear Spring, the actual evidence shows spring flow decreased in response to a drought years before Co-op encountered any significant water, and has recently increased in response to increased precipitation despite continued dewatering at the mine. [See Tank Tr. Ex. 16, Ex. D, Appendices 7-N-A, 7-N-D; 10/17/96 DOGM Tr. 43; 02/28/97 DOGM Tr. 12, 95, 202-210, 258-259]

4. *Information on the dates Co-op intercepted water flow in the mine and the quantity of flow. ...*

There is no proffer of withheld evidence. Evidence on this very point was produced at the Tank seam hearing. Moreover, "new" evidence supplied by Water Users themselves shows, contrary to counsel's argument, that Big Bear Spring has recovered in response to increased precipitation. [cites to "proffer" no. 3 above; 10/17/96 DOGM Tr. 31]

5. *Letter from DOGM concerning Co-op's unauthorized and illegal discharge of water into the abandoned mine workings in the Blind Canyon Seam. ...*

Water Users did not withhold evidence. Water Users' own witnesses testified of these matters at the Tank seam hearing. [Tank Tr. 89, 115, 124-128, 147-148, 161] As DOGM points out, the letter was a public record available to Water Users at the time of the Tank seam hearing.

6. *Furthermore, evidence of additional surface flow measurements ... would indicate areas of stream loss and groundwater recharge to the strata underlying Gentry Ridge. In addition the evidence would have shown that precipitation falling on the Ridge is the source of the water encountered by the mine. ...*

There is no proffer withheld evidence. Evidence was produced by both sides without objection at the Tank seam hearing as to the general Gentry Mountain area being the recharge area. [Tank Tr. 108, 211-212, 224-231, 238-239, Ex. E]

7. *Fracture and joint density and orientation data would have been presented during the hearing to indicate the intensely fracture [sic] nature of the rock formations in Co-op mine permit area which allows movement of water to the springs.*

There is no proffer of withheld evidence. Indeed, this was the meat of Water Users' theory and evidence at the Tank seam hearing – that fractures in the permit area existed and allowed movement of water to the springs. [Tank Tr., Bryce Montgomery testimony generally]

Each and every point for which Water Users now argue they withheld evidence was a point for which they actually produced evidence at the Tank seam hearing. The Board never even implied that Water Users could not produce further evidence on any of those points. Even now, Water Users have proffered no additional evidence they possessed but withheld at the hearing. Even if it did exist, any such evidence would be merely cumulative of other evidence already in the Tank seam record, and would not alter the fact that Water Users were had the opportunity to fully and fairly litigate all issues Co-op has identified, to which collateral estoppel now applies.

## **2. WATER USERS' CLAIMED "NEW INFORMATION AND DATA."**

As Water Users correctly point out, collateral estoppel protects against review or relitigation of issues decided in a prior adjudication, even if the issues were decided incorrectly. Otherwise, a party entitled to the protection of collateral estoppel would be subjected to the burden of a full

evidentiary hearing to determine whether the prior decision was correct. That is the very result collateral estoppel expressly prohibits. Collateral estoppel bars consideration even of "new" evidence that would tend to controvert the Board's Tank seam findings. Since that is the only kind of "new" evidence Water Users describe (but still do not actually proffer), there is no "new" evidence that would preclude collateral estoppel.

Co-op has never claimed collateral estoppel bars new issues (as opposed to new evidence of old issues), such as whether seismic activity has changed the area's hydrogeology since the Tank seam hearing, or whether post-hearing changes to Co-op's mining operation have affected the springs. However, Water Users have proffered no evidence of such issues. Co-op submits no such evidence exists.

Assuming the Board would nevertheless consider any "new" evidence proffered by Water Users, Co-op addresses Water Users' so-called "proffers" in the order made. Co-op proffers that any "new" evidence is as described in Co-op's written Closing Argument in the DOGM informal conference, in the record and for brevity's sake incorporated here by reference.

1. *Evidence that the Gentry Mountain groundwater system is interconnected from top to bottom. ...*

There is no proffer of new evidence. This is merely an argument rehashing evidence Water Users produced at the Tank seam hearing, on an issue already litigated to which collateral estoppel applies. ["proffer" nos. 6 and 7 above]

2. *At the informal conference, ... Co-op admitted it pumped vast quantities of water intercepted at the working face of the mine into a worked-out portion of the mine and elsewhere during period from the [sic] 1989-1992. ...*

This is not a new claim or proffer. It is a repeat of Water Users' point 5 ("withheld" evidence") above, for which Water Users produced evidence at the Tank seam hearing, on an issue already litigated to which collateral estoppel applies. Any new evidence would be merely cumulative of evidence already in the Tank seam record.

3. *Water Users will present evidence that Co-op's dumping of water into the old workings contaminated Big Bear Spring demonstrating an interconnection. ...*

This is not a new claim or proffer. It is a restatement of Water Users' point 5 ("withheld evidence") and point 2 ("new" evidence) above, for which Water Users produced evidence at the Tank seam hearing, on an issue already litigated to which collateral estoppel applies.

4. *Water Users will present additional evidence establishing the communication with and interconnection between the mining operations and the Springs. The evidence will show the following:*

Again, there is no proffer of new evidence. The points Water Users claim the evidence would show go to issues already litigated, to which collateral estoppel applies.

- 4(a). *New and additional Geochemical and Radiometric Sampling was conducted at springs and mine inflow locations in accordance with a Division Order. ... Carbon-14 dates of Birch Spring water were the oldest sampled in the area and suggests that the Pleasant Valley Fault may serve as a hydrologic barrier.*

Water Users admit any new evidence (if it even exists) would show Pleasant Valley Fault, which separates Birch Spring and Co-op's permit area, is a hydrological barrier. That is the very model presented by Co-op at the Tank seam hearing, which the Board held is correct, and to which collateral estoppel applies.

- 4(b). *Mine inflow samples were collected by the Water Users and By Co-op for major cations, anions, trace metals, and radiometric and stable isotopes. ... This showed that the water in this area may be different from water east of the fault system. ...*

The only "mine inflow samples" were taken from the Blind Canyon seam. Water Users admit their new evidence, although not proffered, would show water in the Blind Canyon seam differs from water in other areas. This too supports the model presented by Co-op at the Tank seam hearing, which the Board held is correct, and to which collateral estoppel applies.

- 4(c). *A groundwater flow model was presented by the Water Users showing that the water intercepted by Co-op in the Blind Canyon Seam is the result of the interception of the water table tributary to the lower Blackhawk/Star Point Sandstone aquifer. ...*

There is no proffer of new evidence. It is merely a rehash of evidence presented by Water Users at the Tank seam hearing, which the Board rejected in preference to Co-op's model, to which collateral estoppel applies. [Tank Tr., Bryce Montgomery testimony generally]

Water Users' statement shows Water Users still don't understand the difference between a groundwater level and a potentiometric surface. [See 02/28/97 DOGM Tr. 177-179 for a discussion



of the difference.] The line Water Users refer to was drawn between the Blind Canyon seam and the potentiometric surface (not the groundwater level) of the upper (Spring Canyon member) of the Blackhawk Sandstone. Water Users have admitted the springs flow from the lower (Panther) member several hundred feet below.

- 4(d) *Precipitation data collected from eight meteorological stations in the are [sic] indicates that cyclic changes in precipitation are common and that the long-term precipitation trend is neither increasing nor decreasing, but remains nearly constant. ...*

There is no proffer of new evidence, only another improper attempt to relitigate an old issue to which collateral estoppel applies. Precipitation data was presented at the Tank seam hearing and is in Co-op's permit, Table 7-N-A, and is neither withheld nor new evidence. Water Users have proffered no new precipitation data.

- 4(e). *A connection between precipitation (spring runoff) and spring discharge is observed if you sequentially compare the data. ... The evidence will show that after 1989, the discharge of Big Bear Spring did not follow changes in precipitation while Little Bear Spring continued to follow precipitation changes. ...*

Water Users here raise yet another issue barred by collateral estoppel. The Board already determined from the Tank seam hearing, based on Water Users' own evidence, that Little Bear Spring is not useful as a control. [Tank Tr. I p. 133-136, 213-216; Finding No. 51]

What is more, while withholding the evidence they were supposed to proffer, Water Users argue for conclusions contrary to the undisputed facts. The actual evidence of precipitation and spring flow confirms Big Bear Spring flow in fact follows changes in precipitation. What is more, despite continued dewatering of the mine, Big Bear Spring has already recovered in response to recent increases in precipitation. [See proffer of data attached as Addendum 1] The same data shows no clear correlation between spring flows and mine discharge.

- 4(f). *Birch Spring showed nearly constant spring flow during the period of record and only a very modest decline following the decline in precipitation in 1985. ....*

Water Users have made no proffer of new evidence, but again improperly seek to relitigate an old issue to which collateral estoppel applies. What evidence exists contradicts the conclusions Water Users would like made. Birch Spring declined in spring flow years before Co-op began discharging water. Water Users' new evidence includes its own expert's opinion an earthquake

caused Birch Spring's flow decline. [11/08/97 DOGM Tr 106-107] Additional evidence includes Water Users' plans for developing Birch Spring [Addendum 2, attached], which require that "all trees and brush within 50' of the collection tiles should be removed to keep the lines free of roots." Co-op proffers the testimony of Charles Reynolds, who has recently examined the Birch Spring collection area, who would testify the entire collection area is extensively overgrown with trees and brush, and that despite the design requirement for a "stock-tight fence" animals appear frequent the area, including at least one deer or other animal of similar size who died and whose rotting carcass remains in the spring's collection area. This clearly evidences another "known material variable" -- the decline in Birch Spring flow, besides the earthquake, is also due to Water Users' own failure to maintain the spring's collection system according to design.

4(g). *Prior to 1989, spring discharge at Little Bear Spring and Big Bear Spring peaked between April and July. This is approximately 2 to 3 months following spring runoff and peak flow in most of the surface streams. Following 1989, peak flow at Little Bear Spring has continued to follow spring runoff while peak flows at Big Bear Spring have been almost nonexistent. ...*

There is no proffer of "new" evidence, nor was such data withheld. On the contrary, spring flow data are in Co-op's permit and were in evidence at the Tank seam hearing. Again, any challenge to Finding No. 51, that Little Bear Spring may not be used as a control, is barred by collateral estoppel. This is another improper attempt to relitigate an old issue

4(h). *Co-op has suggested that flows at Big Bear Spring derive from Bear Creek. ...*

Water Users seek no confuse everyone, themselves included, by comparing apples (Big Bear Spring flow) to oranges (Bear Creek flow) on a completely immaterial point. The testimony was elicited at the DOGM informal conference by Water Users, and was not then an important part of Co-op's case. For both collateral estoppel and Co-op's permit renewal, Co-op presently thinks it simply doesn't matter how much spring water enters the ground along Bear Creek's channel.

4(i). *Since April of 1991 Co-op has discharged water under their discharge permit into Bear Creek. ...*

There is no proffer of "new" evidence, only another improper attempt to relitigate an old issue. The numbers Water Users throw out were in evidence at the Tank seam hearing, and clearly

show [Addendum 1] that the flows at both springs reached their approximate full decline before Co-op began discharging any water.

5. *The Division overlooked the logical reasoning that a CHIA must be inadequate if it is based on a Probable Hydrologic Consequence ("PHC") containing inaccurate and insufficient data. ... Water Users will present evidence to oppose Co-op's new theories. ... This evidence would address the following:*

- 5(a). *At the informal conference, Co-op totally changed its prior position with respect to hydrologic data in the PHC and relied on an entirely new theory postulated by their new expert. ... The new theory rejected the perched aquifer concept and is premised instead upon the notion that the mine intercepts and has intercepted a single broad-based sandstone channel that produces and produced the water in the mine. ...*

Water Users have proffered no "new" evidence, and are again improperly trying to relitigate an old issue to which collateral estoppel applies. Co-op has no "new theories," only incremental refinements of information confirming the model presented at the Tank seam hearing. Without further belaboring the point, the sandstone channel is known to be a perched aquifer.

- 5(b). *The current PHC describes the stratigraphic sequence in the mining area as a "great thickness of discontinuous sandstone, coal, and mud/siltstone units." ...*

Water Users have proffered no "new" evidence, and are again improperly trying to relitigate an old issue. Water Users are simply wrong on the facts. The current PHC describes the sandstone channel. [Attachment to Appendix 7-J, p.2-10]

6. *Mining activities which re-direct or contaminate water are in violation of the Environmental Protection Standards ...*

Not one of Water Users' statements here include a proffer of new evidence. Water Users do not even make any new argument, but merely repeat arguments already considered and rejected by DOGM, the Board and the Utah Supreme Court.

7. *There are numerous false and innacurate statements in the PHC ...*

Water Users have proffered not one item in the PHC that is false or inaccurate. Again, Water Users' entire statement merely repeat arguments already considered and rejected by DOGM, the Board and the Utah Supreme Court.

8. *In paragraph 15 of the Order, the Division states that "Big Bear Spring's flow rate has also recovered, from a low of 76 g.p.m. in mid-1995 to 148 g.p.m. in late 1996."*

Water Users again proffer no withheld or new evidence. This statement merely rehashes points already made above.

## **THE BOARD SHOULD APPLY COLLATERAL ESTOPPEL.**

Each and every point for which Water Users claim they have more evidence is a point for which Water Users have failed to proffer any such evidence. Each point is one for which evidence either was produced at the Tank seam hearing, directly contradicts the conclusions Water Users would have the Board draw, or supports conclusions admitted by Water Users which support Co-op's model of the area hydrology and contradicts Water Users' model.

All of Water Users claims of withheld and new evidence seek merely to relitigate issues which they fully litigated, and lost, during the Tank seam hearing. Water Users are barred from relitigating those issues in this proceeding. Collateral estoppel conclusively bars relitigating any issue litigated in a prior action when (1) the parties are identical; (2) there was a final judgment on the merits; (3) the issues are identical; and (4) the issue were competently, fully and fairly litigated. Jones, Waldo, Holbrook, etc. v. Dawson, 923 P.2d 1366, 1370 (Utah 1996). Water Users admit the parties are identical, and the Tank seam hearing resulted in a final judgment on the merits. At least the following issues resolved in the Tank seam proceeding are identical to issues Water Users wish to relitigate in this proceeding:

- There is no hydrological connection between Co-op's permit area and Birch Spring.
- There is no hydrological connection between Co-op's permit area and Big Bear Spring.
- As of the date of the Tank seam Order, neither the quantity nor the quality of water at either spring had been adversely impacted by mining at the Bear Canyon mine.<sup>1</sup>
- As of the date of the Tank seam Order, Co-op's mining operation was designed to prevent material damage to the hydrological balance outside the permit area.
- As of the date of the Tank seam Order, Co-op's permit application was complete and accurate, and in full compliance with all statutory and regulatory requirements.

---

<sup>1</sup> Co-op agrees with DOGM that while ¶ 52 of the Board's Tank seam Order precludes further review of a possible underground connection between the springs and the mine, ¶ 50 indicates the Board did not then rule on the isolated question whether pumping into the old works around 1991 might have contributed to possible surface contamination. However, the same issue was raised and resolved during Co-op's last permit renewal, to which collateral estoppel also applies. Since Co-op discontinued that practice before the last permit renewal and has no intention of renewing it, the issue in any event is moot and not relevant to the present permit renewal.


The final, "fairly litigated" element of collateral estoppel stems from the requirements of due process, and is met if due process is satisfied. Copper State Thrift & Loan v. Bruno, 735 P.2d 387, 391 (Utah App. 1987). The Utah Supreme Court has already held the very issues Water Users now want to relitigate were already competently, fully and fairly litigated in the Tank seam proceeding. Castle Valley Special Services District et al. v. Utah Board of Oil, Gas & Mining, 938 P.2d at 254-255 (Utah 1996). That Court has already ruled Water Users competently, fully and fairly participated in litigating the issues they now would like to relitigate. It would be error to "reverse" the Utah Supreme Court's decision, with or without newly proffered evidence.

DOGM has carefully reviewed the prior proceeding and now agrees that all elements of collateral estoppel are satisfied. Based on the record already before the Board, there is no genuine dispute that all the elements of collateral estoppel have been met, and that Water Users are conclusively precluded from relitigating the above issues. Co-op respectfully asks the Board to order accordingly.

### CONCLUSION

For the reasons stated above, the Board should apply collateral estoppel to bar relitigation of all issues previously resolved by the Board in the Tank seam hearing

DATED this 9 day of January, 1998

  
Attorney for Co-op Mining Company

# CERTIFICATE OF SERVICE

I certify on January 9, 1998 a true and correct copy of the above document was served by first class mail to:

J. Craig Smith  
David B. Hartvigsen  
NIELSEN & SENIOR  
60 East South Temple, Suite 1100  
Salt Lake City, Utah 84111  
Attorneys for  
North Emery Water Users' Association and  
Huntington-Cleveland Irrigation Company

Jeffrey W. Appel  
Benjamin T. Wilson  
COLLARD, APPEL & WARLAUMONT  
9 Exchange Place, Suite 1100  
Salt Lake City, Utah 84111  
Attorneys for  
Castle Valley Special Service District

Daniel G. Moquin  
Assistant Attorney General  
1594 West North Temple, Suite 300  
P.O. Box 140855  
Salt Lake City, Utah 84114-0855  
Attorney for  
Utah Division of Oil, Gas & Mining

A handwritten signature in black ink, appearing to read "Mark Hansen", written over a horizontal line.

2006P.011

## **ADDENDUM 1**

### **PROFFER OF DATA BY CO-OP**

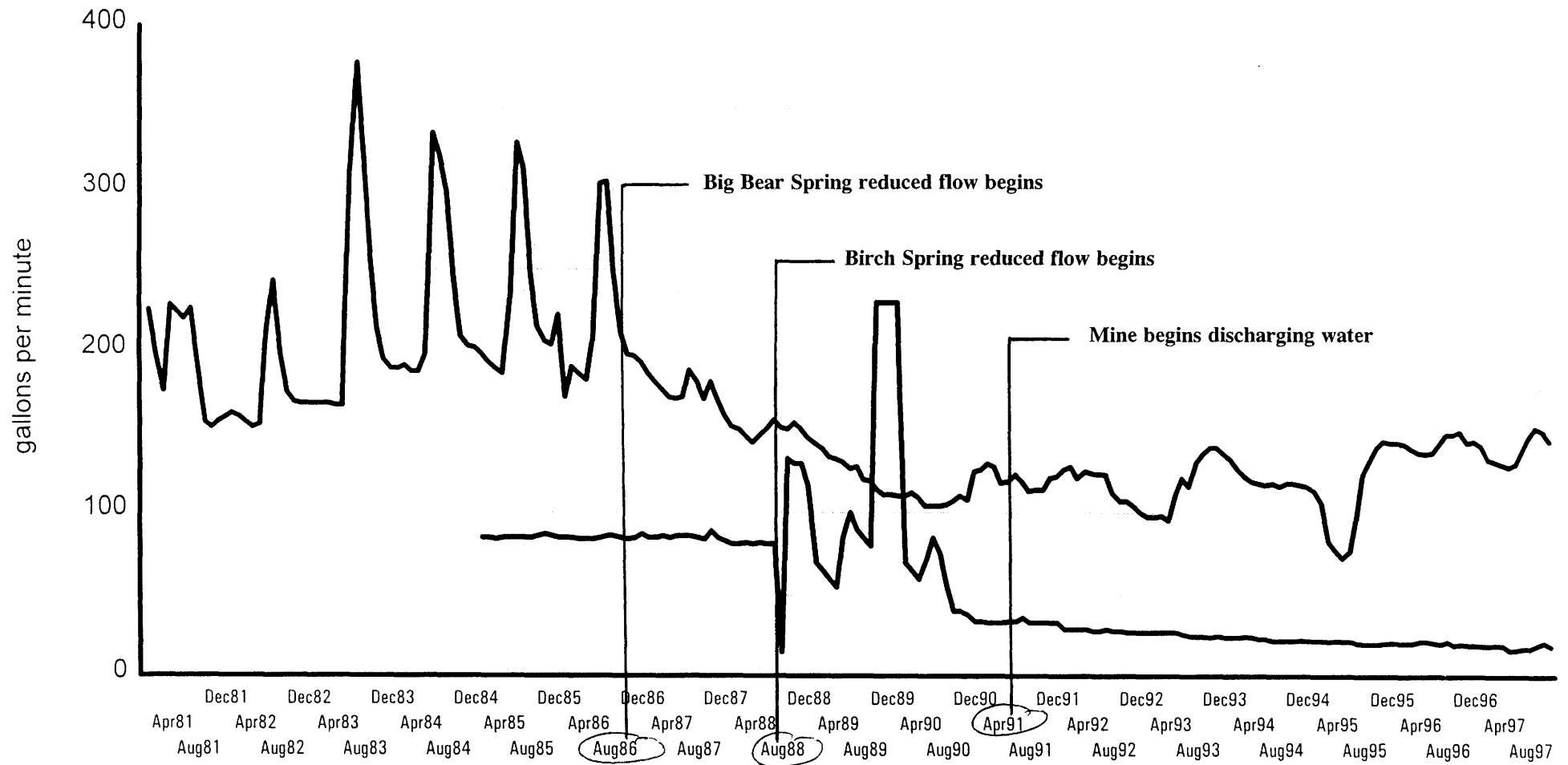
Birch Spring Average Monthly Flow, January 1985 to November 1997

Big Bear Spring Average Monthly Flow, January 1980 to November 1997

Mine Discharge Average Monthly Flow, January 191 to November 1997

Chart Summarizing Birch And Big Bear Spring Flow

## Birch and Big Bear Spring Flow





## Birch Spring Average Monthly Flow

Year	January	February	March	April	May	June	July	August	September	October	November	December
1985	85	85	84	85	85	85	85	85	86	87	86	85
1986	85	85	84	84	84	85	86	86	85	84	85	87
1987	85	85	86	85	86	86	86	85	84	89	85	83
1988	81	81	82	81	82	81	81	15	133	130	130	117
1989	70	65	60	55	85	100	90	85	80	230	230	230
1990	230	70	65	60	70	85	75	55	40	40	38	34
1991	34	33	33	33	34	34	36	33	33	33	33	33
1992	29	29	29	29	28	28	29	28	28	27	27	27
1993	27	27	27	27	27	26	25	24.5	24.5	24	25	24
1994	24	24	24.5	24	23	23	22	22	22	22	22.5	22
1995	22	22	21.5	22	21.5	21.5	20.5	20	20	20	20.5	21
1996	20.5	20.5	20.5	21.5	21.5	21	20	21.5	19.5	20	19.5	19.5
1997	19	19	19.5	19	16	16.5	17	17	19	21	18.5	N/R*

\*Total coliform, dirt and vegetation detected in December. Spring was turned out of the system and no flow was recorded.

## Big Bear Spring Average Monthly Flow

Year	January	February	March	April	May	June	July	August	September	October	November	December
1980	223	228	226	225	228	340	365	304	245	230	239	233
1981	225	198	175	228	224	220	226	0	155	152	156	0
1982	161	159	155	152	154	213	243	198	174	168	167	0
1983	167	167	167	166	166	310	378	319	258	214	195	189
1984	189	191	187	187	198	335	321	299	245	209	203	202
1985	198	193	189	186	233	329	312	247	215	206	204	222
1986	171	190	186	182	208	304	305	249	211	198	197	193
1987	186	181	176	171	170	171	188	181	170	181	170	160
1988	153	151	147	143	147	151	157	152	151	155	151	146
1989	142	139	134	133	131	127	128	120	119	114	111	111
1990	110	110	112	109	104	104	104	105	107	110	108	125
1991	126	130	128	118	119	123	119	113	114	114	121	122
1992	126	128	121	125	124		123	112	107	107	104	100
1993	98	97.6	98.4	95.5	111	121	116	131	136	140	140	136
1994	133	126	122	119	118	117	118	116	118	118		116
1995	113	106	83	77.5	73	77	98	124		140	144	143
1996	143	142	139	137	136	137	142	148	148	150	143	143
1997	141	133			128	130	138	146	152	150	144	

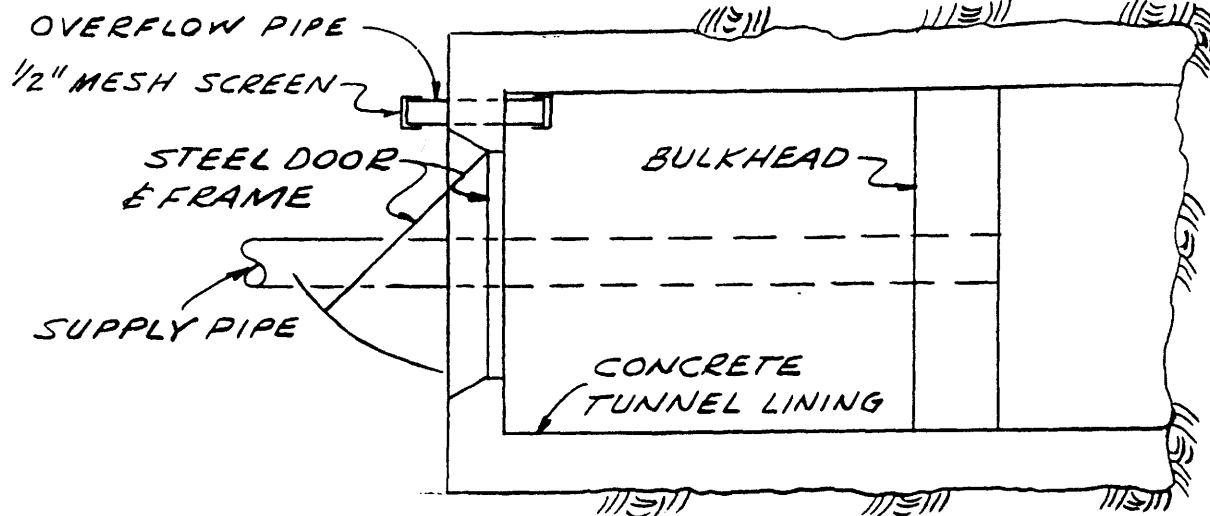
### Mine discharge Average Monthly Flow

Year	January	February	March	April	May	June	July	August	September	October	November	December
1991				60	62	61.5	62	61.2	63.2	60	79.5	194
1992	305	318	304	310	305	305	203	214	124	90.5	99.1	180.3
1993	168	225	68	39.5	150	166.5	166.5	180	166	144	123	123
1994	159	198	166	142	195	182	178	178	192	114.4	131	156.5
1995	160	169	215	122	130	108	81	95	98	97	115	110.7
1996	89	49	123	99	93	99.7	89	90	90	118	120	123
1997	124	105	88	126	84	91	146	124.7	110	110	120.6	

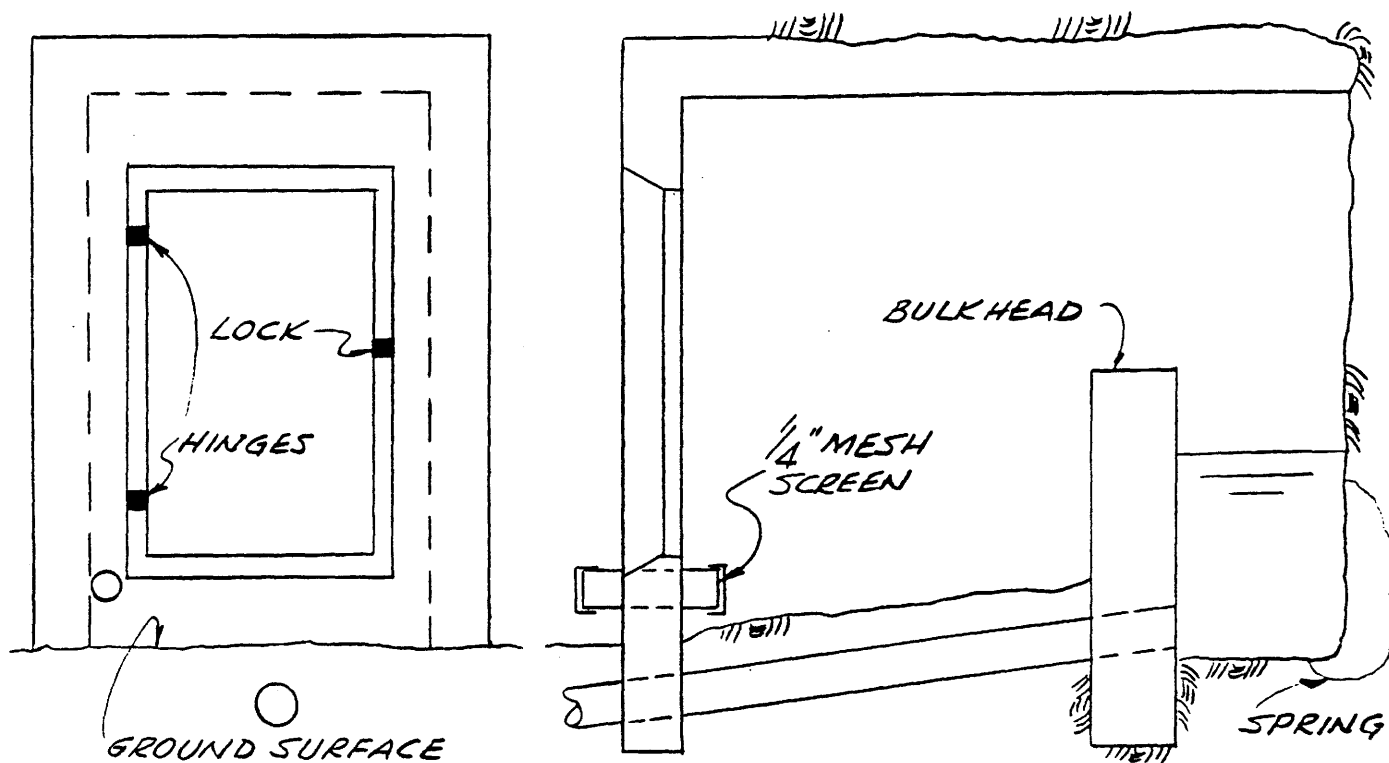
**ADDENDUM 2**

**PROFFER BY CO-OP**

Water Users Plans and Specifications for Development of Birch Spring



PLAN



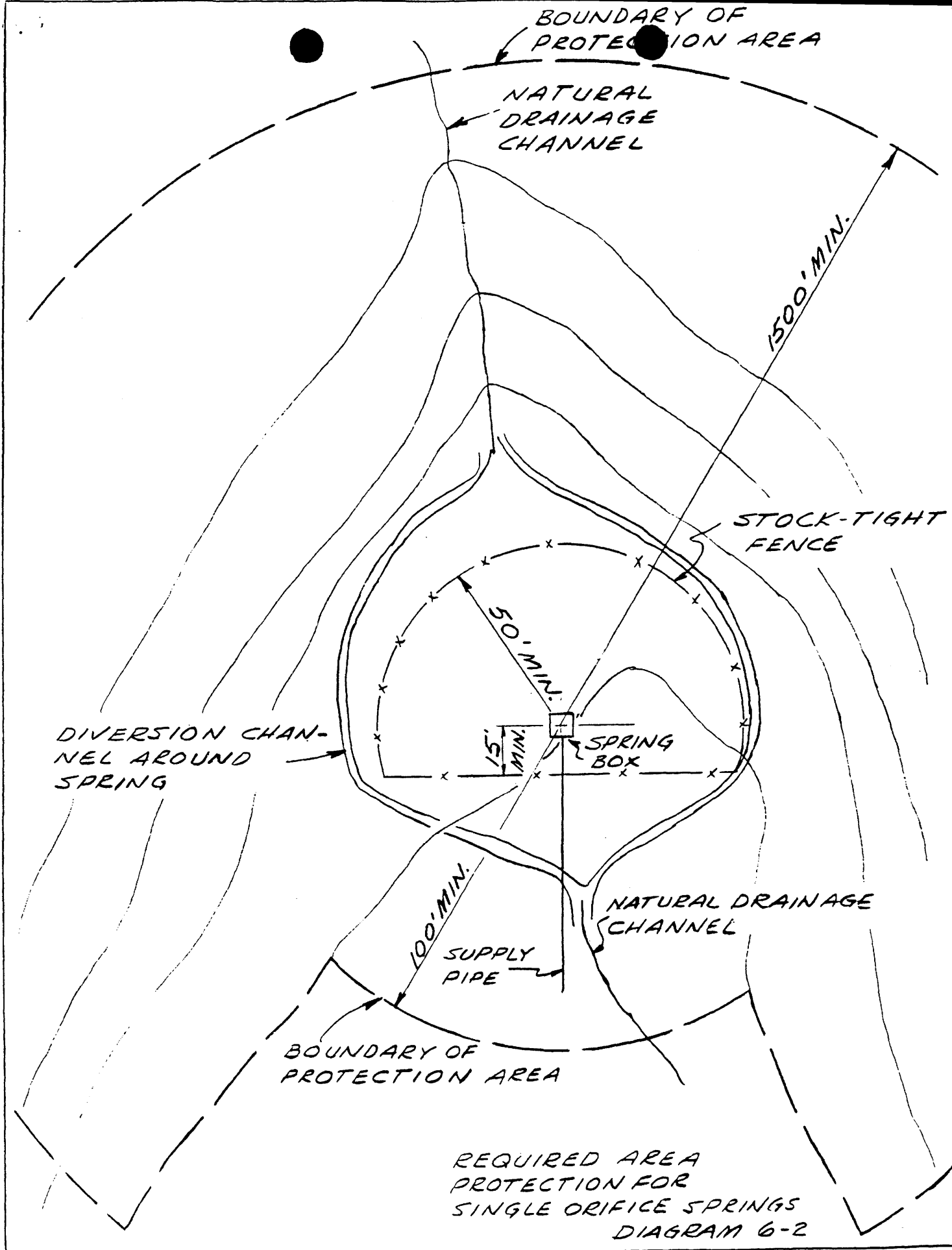
ELEVATION

SECTION

NOTE:  
INCLUDE PERMANENT  
FLOW METERING  
DEVICE

SUGGESTED DETAILS FOR  
COLLECTION OF SPRING  
WATER IN TUNNELS

DIAGRAM 6-1



BOUNDARY OF PROTECTION  
AREA. SEE DIAG. 6-2 FOR DETAILS

1500' MIN.

NOTE:  
ALL TREES AND BRUSH  
WITHIN 50' OF THE COL-  
LECTION TILES SHOULD  
BE REMOVED TO KEEP  
THE LINES FREE OF ROOTS.

DIVERSION  
CHANNEL

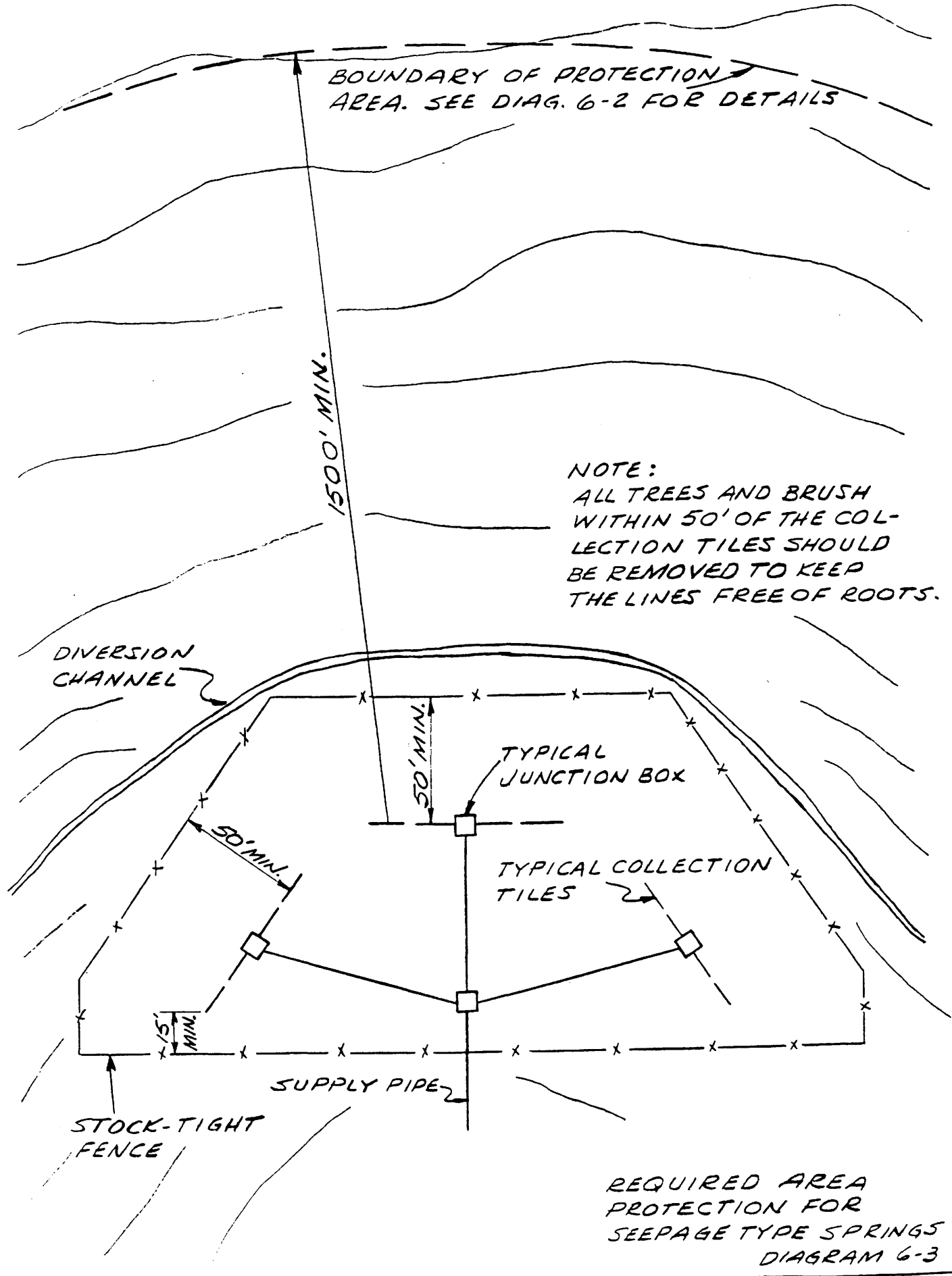
TYPICAL  
JUNCTION BOX

TYPICAL COLLECTION  
TILES

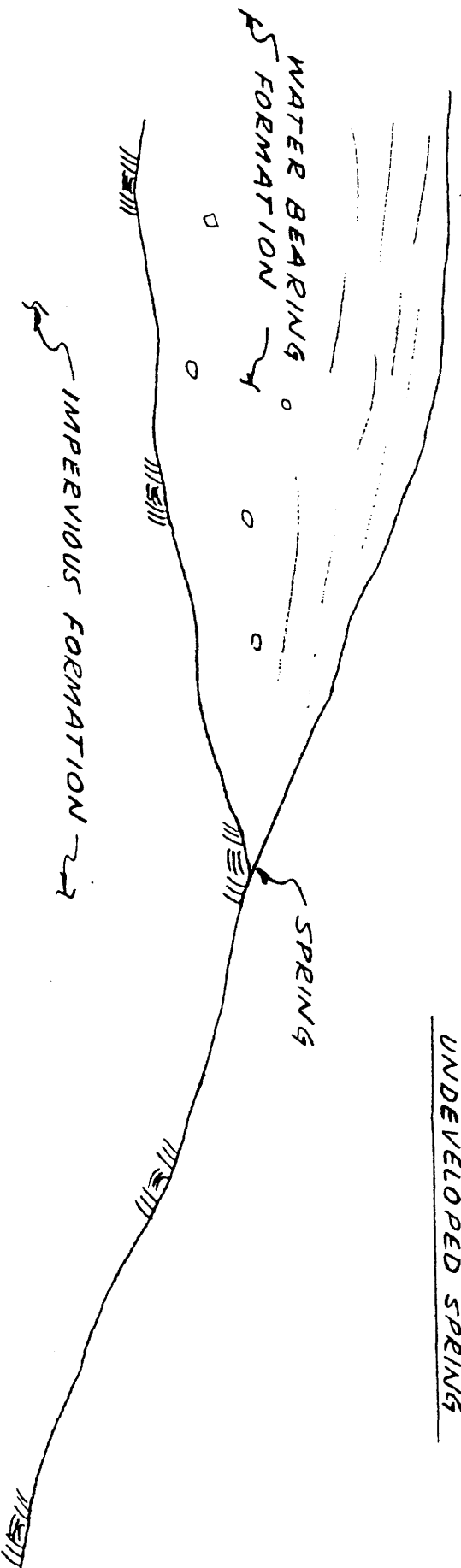
STOCK-TIGHT  
FENCE

SUPPLY PIPE

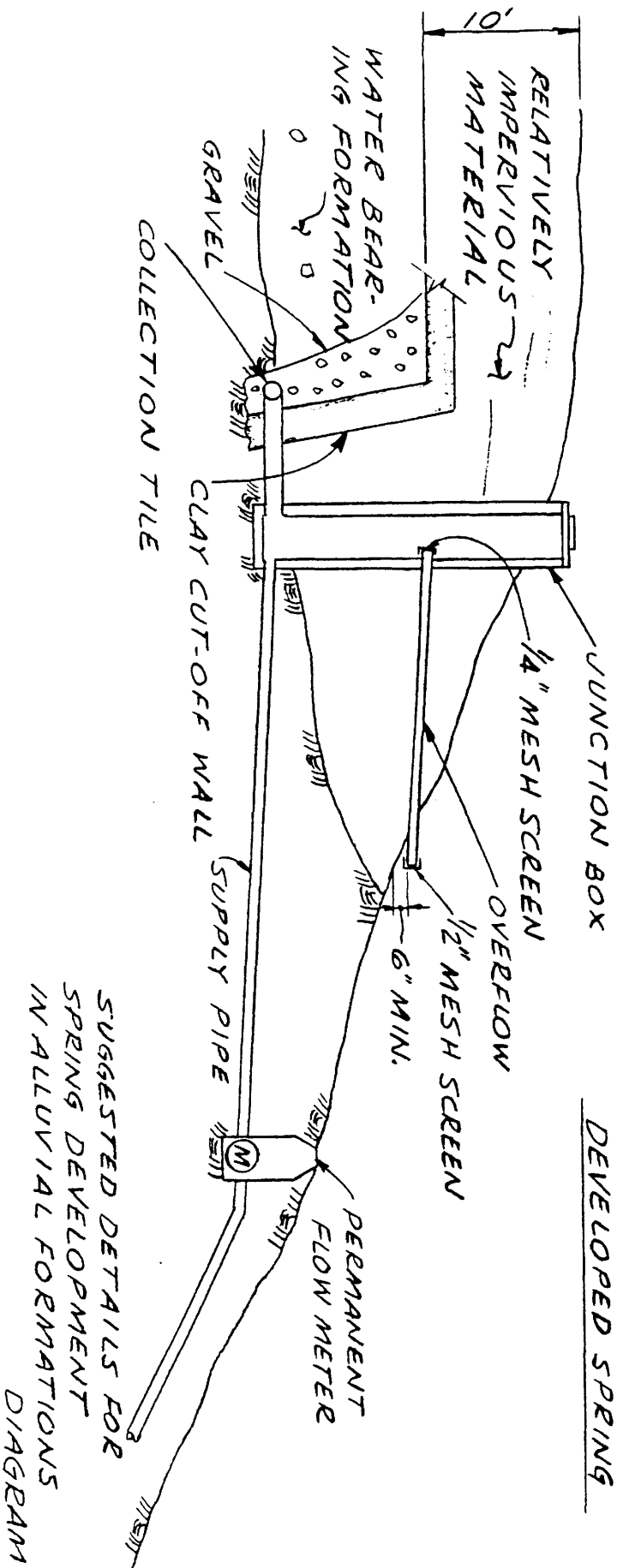
REQUIRED AREA  
PROTECTION FOR  
SEEPAGE TYPE SPRINGS  
DIAGRAM 6-3



# UNDEVELOPED SPRING

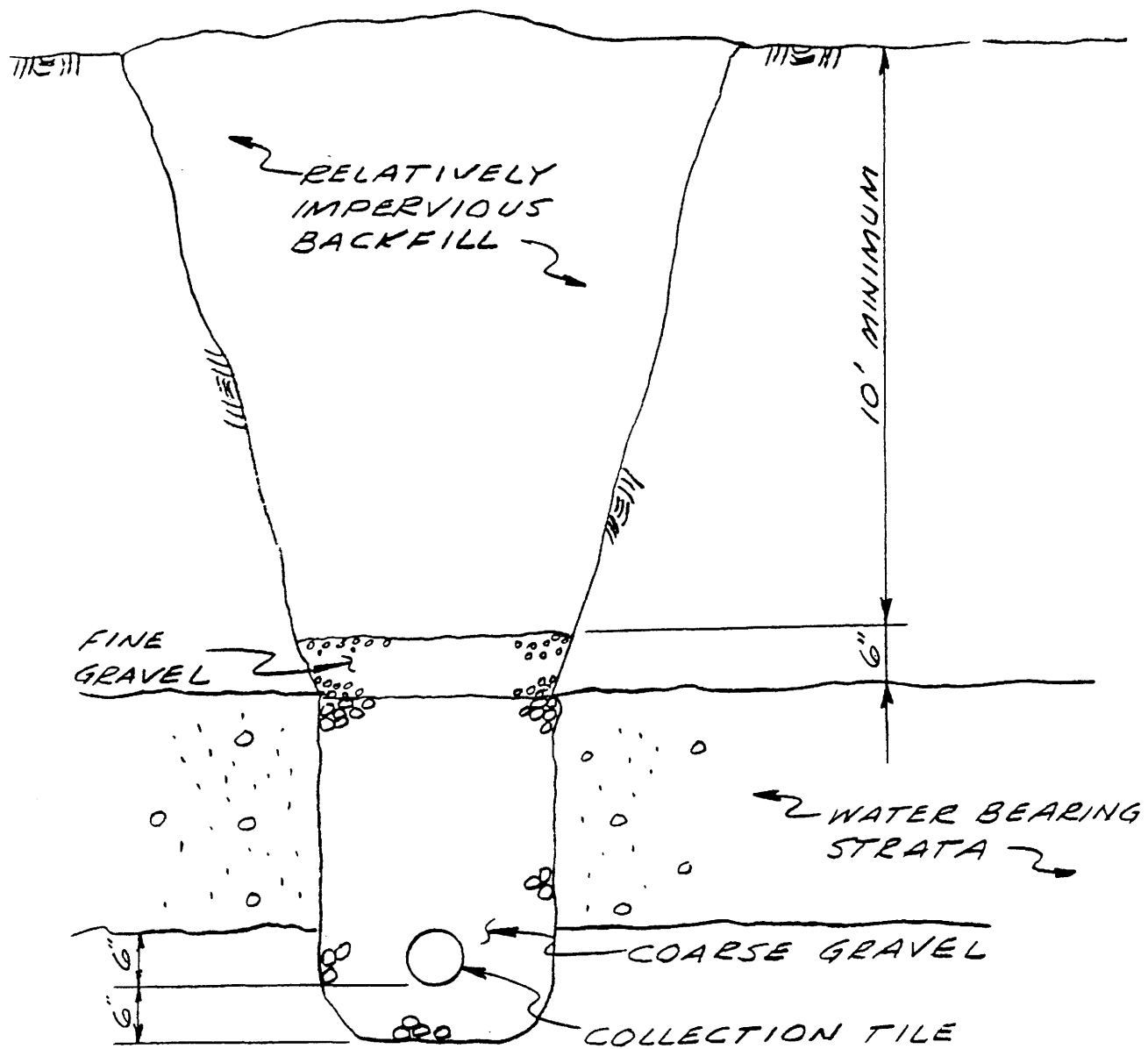


# DEVELOPED SPRING



SUGGESTED DETAILS FOR  
SPRING DEVELOPMENT  
IN ALLUVIAL FORMATIONS  
DIAGRAM 6-4





SPRING WATER COLLECTION LINE  
DESIGN

Existing Upper Pipe--  
Air vent to 6" PVC  
Spring Collection Line  
BM Elev. = 100 - Top of cap.  
Depth to bedrock  
by others = 26 feet.

Existing 6" PVC  
Spring Collection Line

Spring  
overflow box  
Invert = 75

Rock face

#4 water source

6" PVC Spring  
Collection Line pipe  
Invert Elev. = 76.7

Drill hole with  
2" PVC casing.  
Elev. 89.8  
Depth to bedrock  
by others = 29 feet

VALVE

Overflow line  
to creek

PERFORATED

SOLID

